



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 35392583

Date: DEC. 9, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner – a scholar of Kyrgyz history and culture – requests classification under the employment-based, first preference (EB-1) immigrant visa category as a noncitizen with “extraordinary ability.” See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate “sustained national or international acclaim” and extensively document recognition of their achievements in their fields. *Id.*

The Director of the Nebraska Service Center denied the petition. The Director found that the Petitioner met the requested category’s evidentiary criteria. But the Director concluded that he did not demonstrate extraordinary ability in his field or his claimed intent to continue working in the field in the United States. On appeal, the Petitioner contends that the Director overlooked evidence and that his recognition for his achievements in his field, in the aggregate, establish his extraordinary ability.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, see *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that, while he demonstrated his intent to continue working in his field in the United States, he has not established himself among that small percentage of scholars at the field’s very top. We will therefore dismiss the appeal.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that they:

- Have “extraordinary ability in the sciences, arts, education, business, or athletics;”
- Seek to continue work in their field of expertise in the United States; and
- Through their work, would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act. The term “extraordinary ability” means expertise commensurate with “one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Evidence of extraordinary ability must initially demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3)(i-x).¹ If a petitioner meets either evidentiary standard and the other statutory requirements, U.S. Citizenship and Immigration Services (USCIS) must then make a final merits determination as to whether the record, as a whole, establishes their sustained national or international acclaim and recognized achievements placing them among the small percentage at their field's very top. *Amin v. Mayorkas*, 24 F.4th 383, 391 (5th Cir. 2022) (finding USCIS' two-step analysis of extraordinary ability "consistent with the governing statute and regulation"); *see generally* 6 USCIS Policy Manual F.(2)(B), www.uscis.gov/policy-manual.

II. ANALYSIS

A. Facts and Procedural History

The record shows that the Petitioner, a Kyrgyzstani native and citizen, earned a bachelor's degree in history from a university in his home country. Turkish universities later awarded him a master's degree in history and a doctorate in general Turkish history.

Besides presenting 42 papers at international conferences, the Petitioner states that between 2009 and 2023, he wrote eight books and 35 articles regarding Central Asian history and culture. He has worked as: a proofreader, assistant editor, and editor at academic journals; an international political expert at a Turkish "think-tank;" and a partner/manager at an online magazine about Central Asian life and culture. The Petitioner is proficient in nine living and two ancient Turkish languages. From 2016 to 2017, he and four others translated, from the Kyrgyz to Turkish language, the [REDACTED] [REDACTED] The final product consisted of three volumes totaling more than 3,000 pages, representing [REDACTED] first complete translation into Turkish.

The Petitioner states that, in the United States, he seeks to continue working in his field for a university, institution, or government. He specifically plans to continue comparing the language, history, and culture of the Kyrgyz and American Navajo peoples.

The record does not demonstrate – nor does the Petitioner claim – his receipt of a major internationally recognized award. He therefore has to meet at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i-x). The record supports the Director's findings that he satisfied three of the requirements: published material about him and his work in the field; his participation as a judge of others' work in the field; and his authorship of scholarly articles in his field. *See* 8 C.F.R. § 204.5(h)(3)(iii), (iv), (vi).

On appeal, the Petitioner contends that he met another evidentiary criterion regarding receipt of lesser nationally or internationally recognized awards for excellence in his field. *See* 8 C.F.R. § 204.5(h)(3)(i). But, because he has already met the minimum evidentiary requirements, we need not determine whether he satisfied another. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating

¹ If an evidentiary criterion does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

that agencies need not make “purely advisory findings” on issues unnecessary to their ultimate decisions).

We first review the Director’s findings regarding the Petitioner’s intent to continue working in his field in the United States.

B. Intent to Continue Working in the Field

To qualify for the requested immigrant visa category, a noncitizen must demonstrate that they “seek[] to enter the United States to continue work in the area of extraordinary ability.” Section 203(b)(1)(A)(ii) of the Act. Unlike other immigrant visa categories, the requested classification requires no job offer or certification from the U.S. Department of Labor. 8 C.F.R. § 204.5(h)(5). But “clear evidence” must establish that, upon U.S. immigration, petitioners would continue to work in their fields. *Id.* Such evidence may include:

- Letters from prospective employers;
- Proof of “pre-arranged commitments,” like contracts; or
- Noncitizens’ statements detailing their plans to continue their work in the United States.

Id.

In response to the Director’s request for additional evidence (RFE), the Petitioner provided a letter from a research colleague stating that he would fund the Petitioner’s work in the United States.² The Petitioner also submitted a letter from the U.S. online magazine that previously employed him as partner/manager, offering him a job as director of editorial features.

We disagree with the Director’s reasons for discounting the evidence in the Petitioner’s RFE response. But we agree that the materials do not demonstrate his intent to continue working in his field in the United States.

A petitioner must demonstrate eligibility “at the time of filing the benefit request.” 8 C.F.R. § 103.2(b)(1). The Petitioner filed his petition in May 2024. Evidence does not establish his receipt of his colleague’s funding offer or the online magazine’s job offer before the petition’s filing date. The magazine’s job-offer letter bears a June 2024 date, while the colleague confirmed his funding offer in a letter dated the following month. Thus, the evidence in the RFE response does not demonstrate the Petitioner’s intent to continue working in his field in the United States at the time of the petition’s filing.

The only remaining evidence of the Petitioner’s intent to continue working in his field in the United States is his statement included in the initial filing. Such a statement suffices if it “detail[s] plans on how [the petitioner] intends to continue [their] work in the United States.” 8 C.F.R. § 204.5(h)(5).

The Petitioner stated that he wants:

² On appeal, the Petitioner states his acceptance of this funding offer.

to continue to use [his] historical knowledge, translation/interpretation, editing skills, and international relations expert experience in the United States by working in a university, government job, or institution. As a researcher, [he] would like to continue to focus [his] writing on the history, and culture of Central Asian nations.

The Petitioner also stated his intent, in the United States, to continue researching “Kyrgyz-Native American commonalities” and to translate the first book he co-authored on this topic from Kyrgyz to English. He said he further wants “to establish cultural bridges between the Kyrgyz and Navajos.” He states that he and the book’s other co-authors have worked with Kyrgyzstani government officials to plan joint fairs and promotions for Kyrgyz and Navajo people.

We find that the Petitioner’s statement sufficiently details his U.S. work plans. Thus, he has demonstrated his intent to continue working in his field in the United States at the time of the petition’s filing. We will therefore withdraw the Director’s contrary finding.

We next review the Director’s final merits determination.

C. Final Merits Determination

At this adjudicatory stage, petitioners must demonstrate that they have sustained national or international acclaim and that their achievements have been recognized in their fields to an extent placing them among the small percentage who have risen to the fields’ very top. 6 *USCIS Policy Manual* F.(2)(B)(2).

In a final merits determination, USCIS considers “any potentially relevant evidence in the record, even if such evidence does not fit one of the . . . regulatory criteria or was not presented as comparable evidence.” *Id.* A petitioner must explain the evidence’s significance and how it demonstrates their achievement of sustained national or international acclaim or recognition in their field. *Id.* A petition’s approval or denial depends on the evidence’s type and quality. *Id.*

The Director found insufficient evidence of the Petitioner’s favorable comparisons to others at his field’s top and his purported acclaim. The Director stated:

While you need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that you have sustained national or international acclaim and are among the small percentage at the very top of the field.

On appeal, the Petitioner contends that “the sum of his achievements and recognition” demonstrate his extraordinary ability in his field. He cites the following achievements:

1. The Number of Citations to the Petitioner’s Research

The Petitioner provides evidence that, out of six leading scholars in his field, his research articles have received the fourth most citations.

But he submitted this evidence on appeal. If a petitioner received notice and a reasonable opportunity to provide evidence before a petition's denial, we generally disregard the evidence if later submitted on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring submission of all requested evidence together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal where "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

The Director's RFE requested evidence that the Petitioner's articles "ha[ve] been widely cited" and "[r]esults from scholarly literature search websites." The Petitioner submitted these requested materials only on appeal and does not claim their unavailability at the time of his RFE response. We therefore decline to consider the new evidence on appeal.

The record does not otherwise compare the Petitioner's citations to those of leading scholars in his field. He therefore has not documented this purported achievement.

Even if we considered the Petitioner's evidence on appeal, it would not establish the claimed citation-related achievement. The evidence shows that the list of the top six scholars in the Petitioner's field represents only one researcher's opinion. Others might rank different scholars in the field above the Petitioner. Also, the other scholars' work might have generated more citations than the Petitioner's work. Thus, the record does not establish that his research articles have received the fourth most citations among the top six scholars in his field. *See* section 201(b)(1)(A) of the Act (requiring "extensive documentation" of recognized achievements).

2. The Petitioner's Selection to Translate the [REDACTED]

The Petitioner and four others began translating the [REDACTED] from Kyrgyz to Turkish in 2016. The record establishes the [REDACTED] describing their history and traditions. In 2013, the United Nations Educational, Scientific and Cultural Organization added the [REDACTED] In 2017, Kyrgyzstan's then prime minister publicly described the [REDACTED] as "[t]he climax of our heritage, and the pride of our nation."

Based on this information, the Petitioner states:

We can infer that [his] selection as one of five translators on a work of such public interest indicates that he is one of the few who have been recognized for having a superior understanding of Kyrgyz history and culture, in which [REDACTED] is rooted.

We decline to make that inference. The Petitioner bears the burden of proof. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. He submitted a letter from a deputy executive officer of Kyrgyzstan stating that, as the country's former consulate general in Turkey, the officer "initiated" the [REDACTED] translation project. But the record does not indicate who selected the project's five translators or on what basis. The Petitioner therefore has not sufficiently demonstrated that his selection to translate the [REDACTED] gained him significant recognition or acclaim in his field. *See* section 201(b)(1)(A) of the Act (requiring "extensive documentation" of recognized achievements).

3. The Petitioner's Receipt of Kyrgyzstan's "Certificate of Gratitude"

The Petitioner contends that his 2017 receipt of Kyrgyzstan's "certificate of gratitude" for his work on the [] translation "points toward the national acclaim and recognition that he has received as a scholar of Kyrgyz history and culture." The record demonstrates that Kyrgyzstan's then president personally presented the certificate to the Petitioner at a ceremony before hundreds of people in Turkey gathered for the dedication of a monument to the [] Kyrgyzstan's deputy executive officer stated that the country does not award such certificates every year and that recipients are "individuals who have honored the nation with a service that promotes Kyrgyz culture or who have enhanced the country's prestige."

The Petitioner's receipt of the certificate does not demonstrate his place among the small percentage at his field's top. A letter from another translator on the [] project states that all five of the project's translators received Kyrgyzstani certificates of gratitude. But the record does not establish that the project's other translators rank among the field's top scholars. Thus, the Petitioner's receipt of the same certificate does not establish his place among the small percentage of scholars at his field's top.

4. The Petitioner's Newspaper Interview

The Petitioner provided a copy of an [] 2024 interview with him in Kyrgyzstan's leading education and science newspaper. The newspaper's front page includes a photograph of the Petitioner, while the interview appears on page 7.

The record shows that Kyrgyzstan's education and science ministry established the weekly newspaper in 1993 and distributes it to all public schools, libraries, and universities in the country. A 2017 survey ranked the publication's circulation as the fifth largest among Kyrgyzstani newspapers. The Petitioner states: "That [he] was interviewed by a major newspaper, whose special remit is education and science, and that the interview was so prominently featured, strongly suggests a high degree of recognition in the field."

We agree that the Petitioner's newspaper interview reflects recognition of his achievements in his field. But he has not demonstrated that this recognition propels him to a place among the small percentage of scholars at his field's top. For example, the record does not indicate whether the newspaper has featured other scholars in his field.

The Petitioner also submitted letters from other researchers in his field. Most of the letters repeat the Petitioner's accomplishments and make general assertions about him and his work. One letter cites his purported "ground-breaking" research on Kyrgyz-Mongol relations and the parallels between the Navajo and Kyrgyz cultures. The record, however, lacks sufficient detail and explanation regarding the significance of this research to the field and the Petitioner's roles in exploring these topics.

For noncitizens with extraordinary ability, Congress intended to set "a very high standard." Proposed Rule for Employment-Based Immigrants, 56 Fed. Reg. 30703, 30704 (July 5, 1991). Congress reserved this immigrant visa category "for that small percentage of [noncitizens] who have risen to the very top of their field of endeavor." *Id.*

The record identifies the Petitioner as an accomplished and versatile Kyrgyz scholar who has received acclaim and recognition in his field. But his evidence, even in the aggregate, does not sufficiently place him among the small percentage of scholars at his field's very top. *See Amin*, 24 F.4th at 386 (upholding USCIS' final merits determination that a petitioner "was not 'extraordinary' but merely very good").

III. CONCLUSION

The Petitioner demonstrated his intent to continue working in his field in the United States. But he has not established his claimed extraordinary ability in the field. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.